

Introduced by Senator Bowen

February 24, 2006

An act to amend Section 1798.80 of, and to add Section 1798.83.5 to, the Civil Code, relating to personal information.

LEGISLATIVE COUNSEL'S DIGEST

SB 1666, as introduced, Bowen. Personal information: obtaining information by fraudulent, deceptive, or false means.

Existing law requires a business to ensure the privacy of a customer's personal information, as defined, contained in records, as defined, by destroying, or arranging for the destruction of, the records. Existing law requires, subject to certain exceptions, a business that discloses a customer's personal information, including information relating to income or purchases, to a 3rd party for direct marketing purposes to provide the customer, within 30 days after the customer's request, as specified, in writing or by e-mail the names and addresses of the recipients of that information and specified details regarding the information disclosed, except as specified. Existing law requires a person or business that owns or licenses computerized data that include personal information to disclose any breach of the security of its system, as specified. Existing law requires a business, other than specified entities, that own or license personal information about a California resident to implement and maintain reasonable security procedures and practices to protect personal information from unauthorized access, destruction, use, modification, or disclosure. Any customer injured by a business' violation of these provisions is entitled to recover damages, a civil penalty, attorney's fees, injunctive relief, and other remedies.

This bill would include a telephone calling pattern record or list, as defined, in the definition of "personal information" for purposes of the

above-described provisions. The bill would prohibit any person, as defined, from knowingly procuring, attempting to procure, soliciting, or conspiring with another person to procure, personal information of a customer that is a resident of this state, except as authorized by the above-described provisions, or by any fraudulent, deceptive, or false means to procure personal information of a customer. The bill would prohibit a person from knowingly selling, attempting to sell, offering to sell, or conspiring to sell personal information of a customer that is a resident of this state, except as authorized by the above-described provisions. The bill would prohibit a person from receiving a record containing personal information of a customer that is a resident of this state, knowing that the record has been obtained in violation of the above-described provisions or that was obtained by fraudulent, deceptive, or false means. The bill would authorize a business from which a record containing personal information has been unlawfully acquired to bring an action seeking any equitable relief, including disgorgement of any unlawful monetary or other gain, that the court deems appropriate, and for reasonable attorney's fees and costs of suit.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1798.80 of the Civil Code is amended
2 to read:
3 1798.80. The following definitions apply to this title:
4 (a) "Business" means a sole proprietorship, partnership,
5 corporation, association, or other group, however organized and
6 whether or not organized to operate at a profit, including a
7 financial institution organized, chartered, or holding a license or
8 authorization certificate under the law of this state, any other
9 state, the United States, or of any other country, or the parent or
10 the subsidiary of a financial institution. The term includes an
11 entity that destroys records.
12 ~~(b) "Records" means any material, regardless of the physical~~
13 ~~form, on which information is recorded or preserved by any~~
14 ~~means, including in written or spoken words, graphically~~
15 ~~depicted, printed, or electromagnetically transmitted. "Records"~~
16 ~~does not include publicly available directories containing~~
17 ~~information an individual has voluntarily consented to have~~

1 ~~publicly disseminated or listed, such as name, address, or~~
2 ~~telephone number.~~

3 ~~(e)~~

4 (b) “Customer” means an individual who provides personal
5 information to a business for the purpose of purchasing or leasing
6 a product or obtaining a service from the business.

7 ~~(d)~~

8 (c) “Individual” means a natural person.

9 (d) “Person” means an individual, business association,
10 partnership, limited partnership, corporation, limited liability
11 company, trust, estate, cooperative association or other entity.

12 (e) “Personal information” means any information that
13 identifies, relates to, describes, or is capable of being associated
14 with, a particular individual, including, but not limited to, his or
15 her name, signature, social security number, physical
16 characteristics or description, address, telephone number,
17 *telephone calling pattern record or list*, passport number,
18 driver’s license or state identification card number, insurance
19 policy number, education, employment, employment history,
20 bank account number, credit card number, debit card number, or
21 any other financial information.

22 (f) “Procure” means to obtain by any means, whether
23 electronically, in writing, or in oral form, with or without
24 consideration.

25 (g) “Records” means any material, regardless of the physical
26 form, on which information is recorded or preserved by any
27 means, including in written or spoken words, graphically
28 depicted, printed, or electromagnetically transmitted. “Records”
29 does not include publicly available directories containing
30 information an individual has voluntarily consented to have
31 publicly disseminated or listed, such as name, address, or
32 telephone number.

33 (h) “Telephone calling pattern record or list” means any
34 document or record, including electronic records, of the
35 telephone or other access numbers called by any other person, or
36 received by any other person utilizing services provided by a
37 telephone corporation, as defined in Section 234 of the Public
38 Utilities Code, a provider of voice communication over the
39 Internet utilizing voice over Internet protocol, a provider of voice
40 communication to end users over a mobile satellite service

1 *involving the provision of commercial mobile radio service,*
2 *pursuant to Parts 20 and 25, Title 47 of the Code of Federal*
3 *Regulations, or a provider of mobile telephony services, as*
4 *defined in Section 2890.2 of the Public Utilities Code.*

5 SEC. 2. Section 1798.83.5 is added to the Civil Code, to read:

6 1798.83.5. (a) No person shall:

7 (1) Knowingly procure, attempt to procure, solicit, or conspire
8 with another person to procure, personal information of a
9 customer that is a resident of this state, except as authorized by
10 this title, or by any fraudulent, deceptive, or false means procure
11 personal information of a customer.

12 (2) Knowingly sell, attempt to sell, offer to sell, or conspire to
13 sell personal information of a customer that is a resident of this
14 state, except as authorized by this title.

15 (3) Receive a record containing personal information of a
16 customer that is a resident of this state, knowing that the record
17 has been obtained in violation of this title or was obtained by
18 fraudulent, deceptive, or false means.

19 (b) Any personal information that is obtained in violation of
20 subdivision (a) shall be inadmissible as evidence in any judicial,
21 administrative, legislative, or other proceeding except when that
22 information is offered as proof in an action for violation of this
23 title.

24 (c) A business from which a record containing personal
25 information has been unlawfully acquired in violation of
26 subdivision (a), may seek both of the following:

27 (1) Reasonable attorney's fees and costs of suit.

28 (2) Any equitable relief, including disgorgement of any
29 unlawful monetary or other gain, that the court deems
30 appropriate.

31 (d) (1) Nothing in this section prohibits the Attorney General,
32 any district attorney, or any assistant, deputy, or investigator of
33 the Attorney General or any district attorney, any officer of the
34 California Highway Patrol, any chief of police, assistant chief of
35 police, or police officer of a city, county, or city and county, any
36 sheriff, undersheriff, or deputy sheriff regularly employed and
37 paid in that capacity by a county, or any person acting pursuant
38 to the direction of one of these law enforcement officers acting
39 within the scope of his or her authority, from obtaining a record

1 that contains personal information, in connection with the
2 performance of the official duties of the law enforcement agency.

3 (2) Nothing in this section prohibits any person from obtaining
4 a record containing personal information pursuant to a lawfully
5 issued and noticed subpoena or court order.

6 (3) Nothing in this section prohibits any business, or officer,
7 agent, or employee of a business, from obtaining a record
8 containing personal information in the course of testing the
9 security procedures or systems of the business or otherwise in
10 furtherance of maintaining the confidentiality of customer
11 personal information.

12 (4) Nothing in this section prohibits any business, or officer,
13 agent, or employee of a business, from obtaining a record
14 containing personal information in the course of investigating
15 allegations of misconduct or negligence on the part of the
16 business, an agent, or employee of the business, in maintaining
17 the confidentiality of customer personal information.

18 (5) Nothing in this section prohibits any business, or officer,
19 agent, or employee of a business, from obtaining a record
20 containing personal information in the course of recovering any
21 record containing personal information obtained in violation of
22 subdivision (a).

23 (e) The civil rights and remedies provided by this section are
24 in addition to, and not exclusive of, any civil rights and remedies
25 otherwise available to any person.